IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 956 OF 2007

Vijay Sakharam Sinkar) .. Petitioner.
Aged 39 yrs.Resident of Khandala)
(Gaothan) Tal Maval, Dist.Pune)

V/s.

1. State of Maharashtra) .. Respondents.
through its Secretary, Tribal)
Development Department,)
Mantralaya,Mumbai32.)
and others.

Mr.R.K.Mendadkar with Ms.M.K.Mandlik with Shri C.G.Gavnekar for the Petitioner.

Mr. A.A.Garge for the Respondent No.3.

Mr.V.A.Gangal,Spl.Counsel with Mr.R.D.Rane, Govt. Pleader for the Respondent Nos.1 & 2.

CORAM : F.I. REBELLO AND
R.M. SAVANT, JJ.

DATED : 23rd MARCH, 2007.

(Reserved for orders on 20.03.2007)
(Order pronounced on 23.03.2007)

P.C. :- (Per R.M.SAVANT,J.)

. By this petition filed under Article 226 of the Constitution of India, the petitioner challenges the order of the Caste Scrutiny Committee dated 19.01.2007, by which order the petitioner’s caste claim that he

belongs to Mahadeo Koli, which is a scheduled tribe, has been rejected.

2. The petitioner is a resident of taluka Mulshi, Dist. Pune and contested the elections of Lonawala Municipal Council from ward No.11, which were held some time in November, 2006. The petitioner was elected from the said ward which was reserved for the scheduled tribe. On his being elected as Municipal Councillor of the Lonawala Municipal Council, the petitioner's caste certificate was forwarded to the Scheduled Tribe Caste Certificate Scrutiny Committee, Pune Division, Pune (hereinafter referred to as 'the said Committee'). The said Committee on the basis of the material before it came to the conclusion that the petitioner does not belong to the said Mahadeo Koli Caste. It is the said order, as indicated above, which has been impugned in the present petition.

3. The petitioner's challenge to the said order is threefold. Firstly, it is the contention of the learned counsel of the petitioner that the committee which verified tribes claim of the petitioner was not properly constituted. Relying upon the judgment of the apex court in Madhuri Patil's case reported in AIR 1995 SC 94, it is the submission of the learned counsel for the

petitioner that the substitution of the Joint Director TR & TI, Pune by the Joint Commissioner, Pune was not permissible. According to the learned counsel the said committee was constituted as per the direction contained in the said judgment of the apex court and the subsequent judgment reported in AIR 1997 SC 2581 which had interalia, prescribed as to who should constitute the said committee. The learned counsel for the petitioner drew our attention to the notification dated 12th July, 2006 by which notification, an amendment has been carried out to the original notification dated 4th of June 2003 issued under the Local Act, known as Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000. By the said amendment, the words "Joint Director, TR & TI, Pune' have been substituted by the words "Joint Commissioner, Pune". It is, therefore, sought to be contended by the learned counsel that for any change in the constitution of the said committee, the State Government has to approach the Apex Court and seek its permission. The Apex Court in the said judgments (supra), in view of the machinery that was then available for scrutinising the caste claim of the applicant had directed the constitution of

expert/special committee for considering the caste claim of the applicant. The directions as regards constitution of the said Committee could be attributable to Article 142 of the Constitution of India. The said Article 142 empowers the Apex Court to issue such directions as are necessary for doing complete justice in the matter before it.

4. The State Government after the said judgments has come out with a comprehensive legislation, known as Maharashtra Scheduled Castes, Scheduled Tribes, De-Notified Tribes (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act,2000. The said Act, which has come into force sometime in the year 2001, now governs the entire field of issuance of caste certificate and the process of validation by the Caste Scrutiny Committee. Under section 6 of the said Act, the State Government is empowered to issue a notification for constituting such caste/tribes scrutiny committees. It is under the said provisions that the State Government has now reconstituted the said committee by substituting "Joint Director, TR & TI, Pune by the "Joint Commissioner, Pune". Vide Notification dated 4th June, 2003, the Scrutiny Committee was constituted under the said Act

after its promulgation. The constitution of the said Committees under the said Act was virtually on the same lines as directed in the judgment of the Apex Court in Madhuri Patil's case. However, by the notification dated 12th July, 2006, an amendment has been carried out by substituting the 'Joint Director, TR & TI, Pune' by the 'Joint Commissioner, Pune'. This, we are informed, was done on account of administrative exigency. Since the area of scrutinising the caste certificates is now governed by a comprehensive legislation, we do not find any infirmity in the action of the State Government in issuing the said notification dated 12th July, 2006. The plenary powers of State Legislature to legislate were not taken away by the observations of the Apex Court in the said Madhuri Patil's case. We, therefore, do not find any merit in the submission of the learned counsel for the petitioner that the State Government ought to have applied to the Apex Court for reconstituting the said committee. Since we are on the issue of the reconstitution of the committee, vide the notification dated 12th July, 2006, it would be significant to note that the Joint Commissioner is in the same pay-scales as the Joint Director TR & TI and therefore, on the said ground also the submission of the learned counsel for the petitioner is bereft of any merit.

5. The second limb of the argument of the learned counsel for the petitioner is that the committee failed to consider the material produced before it and specially the service card granted by the Railways to the father of the petitioner, wherein the caste of the petitioner's father is mentioned as Mahadeo Koli. The petitioner in support of his tribe claim produced a host of documents which are tabulated by the committee at internal page 7, below paragraph -B of the order. The said tabulated statement appears at page 32 of the paper book of the present petition. A glance at the said tabulated statement would disclose that caste of the close relations of the petitioner is mentioned as one other than Mahadeo Koli. In fact the petitioner's birth certificate itself shows his caste as "Koli".

6. The reliance of the petitioner on the service card of his father in our view does not further the case of the petitioner. The said certificate issued to the petitioner's father is of the year 1975 which is much after the presidential order and therefore, cannot be said to have the same probative value as a pre-presidential order document. The petitioner also seeks to rely upon the validity certificate in favour of distant relations. Apart from the fact that the

petitioner has failed to mention as to how the said persons are related to him, in our view, the same would have no bearing on the caste claim of the petitioner. As regards family traits, characteristics, customs etc., the committee has come to the conclusion that the petitioner has failed in the said test. The learned counsel for the petitioner lastly sought to rely upon 7/12 extracts in favour of one Sakharam Sinkar, to contend that the lands in question were returned on account of the fact that the persons concerned were tribals. Except the 7/12 extracts, there is nothing produced by the petitioner in evidence of the fact that the said lands in question were returned on the ground that the persons concerned were tribals. The finding of the committee on the said score , in our view, therefore, do not suffer from any infirmity.

7. It was lastly sought to be contended by the learned counsel for the petitioner that the committee has not considered the aspect of the traits, characteristics etc. and, therefore, the order is bad on that count. The said submission of the petitioner’s learned counsel cannot be countenanced in the teeth of the findings of the committee that the information given by the applicant and his father at the time of hearing, regarding the traits, characteristics, customs and

traditions of their community are different from that of genuine Koli Mahadev, Scheduled Tribe. Hence, the applicant has failed to prove his affinity towards the Koli Mahadev, Scheduled Tribe.

8. What we have noticed in the instant matter is that there is overwhelming evidence against the petitioner in respect of his caste claim. What the petitioner, in fact, seeks to do is to place reliance on stray pieces of evidence which in our view is not sufficient to sustain a caste claim. A caste or tribe claim is to be proved by convincing and cogent material which in our view is lacking in the instant case.

9. In that view of the matter, we do not find any illegality or infirmity committed by the Respondent No.2 Committee in rejecting tribe claim of the petitioner. Resultantly, no case for interference under the extraordinary jurisdiction of this court is made out. The petition is, therefore, summarily dismissed.

(F.I.REBELLO,J.)

(R.M.SAVANT,J.)

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